

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE**

**MISC. CIVIL APPLN. NO. 113 OF 2019
AND
MISC. CIVIL APPLN. NO.158 OF 2019
IN
MISC. CIVIL APPLN. NO. 949 OF 2017**

OSCAR JOSEPH D'SOUZA@ OSCAR JOSEPH
CONSTANTINE D'SOUZA ... Applicant

Versus

FR. KENNETH AUGUSTINE D'SOUZA
AND 8 ORS. ... Respondents

Adv. Vithal Naik for the applicant.

REGISTRAR'S COMMON ORDER

The Misc. Civil Appln. No. 113/2019 is for seeking order under provisions of Order V Rule 25 Read with Order V Rule 9 of C.P.C., in respect of service upon respondent no.3 & 4 namely Mrs. Enid D'Souza and Mr. Albert Coutinho.

By order dated 05.03.2018, the Hon'ble Court allowed the petitioner to serve the notices by Registered Post/Speed Post in addition to the regular mode. In the application which is duly supported by an affidavit, the Applicant states that he took necessary steps to effect the service on respondent nos. 3 and 4, who are residing in Foreign Country, by sending the notices by speed post. The applicant has sent the notices to the said respondents on 13.02.2018 and 03.05.2018. He has produced the postal receipts and tracking report of the same. It is also stated that the notices are again sent on the available addresses, pursuant to the order of the Hon'ble Court dated 12.09.2018. However, the postal acknowledgment dues are not yet received even though time of 30 days has been lapsed.

The applicant has filed another Misc. Civil Appln. No. 158/2019 for producing the email correspondence between the applicant and the respondent no.4 and it is supported by an affidavit. The applicant states that e-mail dated 29.01.2019 at 4.24 a.m. he received an e-mail from respondent no. 4 from his e-mail Id i.e. albertcoutinho148@gmail.com to ojcdsouza@gmail.com. In the said e-mail the respondent no. 4 acknowledges the receipt of notices from the High Court of Bombay at Goa, Panaji Goa.

The Ld. Advocate for the applicant relies upon the order of the High Court of Bombay at Goa passed in *Misc. Civil Appln. No. 269/2018 in Writ Petition No. 42/2017 dated 7th May, 2018*, wherein the Hon'ble Court, in the similar facts of the case held applying principals set out in provisions of Order V Rule 9 of C.P.C, it can be declared that the service has been duly effected.

"4. The proviso to Order 5 Rule 9 of the Civil Procedure Code states that where the summons was properly addressed, prepaid and duly sent by postal acknowledgement due, the declaration referred to in sub-rule (5) that summons have been duly served upon the defendant, shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid or for any other reason has not been received by the Court within 30 days from the date of issue of the summons".

Therefore, in view of the above said provisions, it reveals that the applicant has sent the notices to respondent no. 3 & 4 by Speed post/ Registered Post A/D as well as by e-mail, but its acknowledgement dues are not yet received even though period

of 30 days lapsed. Moreover by email dated 29.01.2019 respondent no. 4 has acknowledged the receipt of notices. Hence, it is good service of notice upon respondent no. 3 and 4.

Hence, this application is allowed i.e. Misc. Civil Appl No. 113/2019 and Misc. Civil Appln. No. 158/2019 is filed.

Date: 13th February, 2019

(Kiran A. Bagi)
Registrar(Judicial)